

REMARKS

Claims 4, 6, 7, 9-14, 16-30 and 40-44, and 46 are pending. Claims 13, 14, 17, 20-27, 30, and 41-43 were previously withdrawn. Claims 4, 6, 12, and 40 are currently amended. Claims 5, 15, and 45 are herein cancelled. Claim 46 has been added. In view of the amendments above and the remarks that follow, Applicants believe that this application is now in condition to receive a formal notice of allowance.

Objections to Drawings

Claim 12 has been amended and therefore the objection to the drawings is now moot.

Rejections Under 35 U.S.C. §102(b)

Sugiyama

Pending claims 4, 6, 7, 9, 10, 18, 28, 29, and 40 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,720,474 to Sugiyama ("Sugiyama"). The PTO provides in MPEP §2131 that, "[t]o anticipate a claim, the reference must teach every element of the claim. . ."

With respect to independent claims 4 and 40, to sustain this rejection the Sugiyama patent must contain all of the elements of the claim. However, the cited art does not appear to disclose an outer body including a first vertebral interface endwall textured for engagement with one of the two vertebral bodies and an inner body including a second vertebral interface endwall textured for engagement with the other of the two vertebral bodies as recited in amended claim 4 or the step of engaging an endwall of the outer member with a first vertebral body and engaging an endwall of the inner member with a second vertebral body as recited in amended claim 40. For at least these reasons claims 4 and 40 and the dependent claims which further limit claims 4 and 40 are believed to be in condition for allowance.

Hedman

Pending claims 4, 6, 7, 9-12, 16, 29, and 40 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,759,769 to Hedman et al. ("Hedman").

With respect to independent claims 4 and 40, to sustain this rejection the Hedman patent must contain all of the elements of the claim. However, the cited art does not appear to disclose

a core member positioned entirely within the chamber. The coil springs 72, 74 of Hedman identified as corresponding to the claimed core member do not extend entirely within the recesses 52, 58 of the lower member 28 as can be clearly seen in FIGS. 2 and 8. For at least these reasons claims 4 and 40 and the dependent claims which further limit claims 4 and 40 are believed to be in condition for allowance.

New Claim

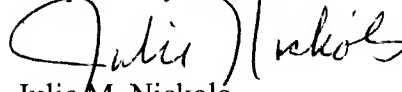
New claim 46 includes the limitations of “a first vertebral interface endwall textured for engagement with a first vertebral body, a lateral wall, and a chamber surrounded by the lateral wall and bounded at one end by the first vertebral interface endwall;” “a second vertebral interface endwall textured for engagement with a second vertebral body and a shaft portion sized to extend within the chamber;” and “a core member sized to fit entirely within the chamber.” The cited references do not appear to disclose an apparatus having these features. Applicants note particularly that the center posts 36 of Hedman do not appear to extend within the recesses 52 as shown in FIG. 8 and explained further in col. 4, lines 25-34.

Conclusion

In view of the foregoing amendments, added claims, and remarks, the Applicant respectfully requests further and favorable consideration of the present application. If the Examiner believes that examination of this application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8640.

No fees, including extension of time fees, are believed necessary for consideration of the present paper. However, if any fees, including extension of time fees, are necessary, the extension of time is hereby requested, and the Commissioner is hereby authorized to charge any fees, including those for the extension of time, to Haynes and Boone, LLP's Deposit Account No. 08-1394.

Respectfully submitted,



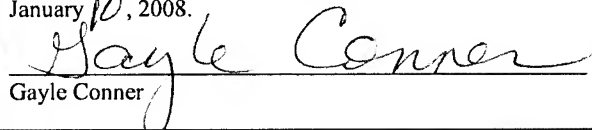
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I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via EFS-Web on January 10, 2008.


Gayle Conner